

**LAW OFFICES OF GENE MESH AND ASSOCIATES**

22 June 2004

ALL COUNSEL

Re: OHSL

Dear Counsel:

I am writing to inform you that Magistrate Judge Hogan's chambers has agreed to have a status conference on **WEDNESDAY 30 JUNE 2004 @ 1:00pm**. I asked his clerk, Linda, if it would be appropriate to submit a letter indicating what the outstanding issues are, and I respectfully request your input into whether this should be a joint letter or individual letters from plaintiffs and defendants.

Finally, despite the recent dismissals, I have chosen to inform counsel for KMK and E&Y about this conference to the extent that the interests of their client may somehow be affected by how things proceed because I am currently seeking discovery against both E&Y and KMK.

Kindly advise on how you wish to proceed. Thank you for your cooperation.

Sincerely,



Michael G. Brautigam

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at Tull Road  
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**LAW OFFICES OF GENE MESH AND ASSOCIATES**

25 June 2004

ALL COUNSEL

**Re: OHSL**

Dear Counsel:

I would like to submit a letter to Magistrate Judge Hogan on Monday to alert him as to what needs to be discussed on Wednesday. I would prefer that this be a joint submission, so as not to burden the Court. If we cannot work this out, I will submit a letter on my own on Monday. Plaintiffs respectfully request that any joint letter address the following issues.

1. **Discover from E&Y** E&Y is objecting to any discovery going forward until ALL motions to dismiss are decided;
2. **Discovery from KMK** KMK is refusing to cooperate in discovery. Zero cooperation from Pat Fischer of KMK;
3. **Doc. No. 204 Motion to Strike Pat Fischer letter, 8/11/03**  
(Unopposed);
4. **Doc. No. 333 Motion to Strike Exhibits, 5/20/04 (Unopposed);**
5. **Doc. No. 280 Motion to Strike Affidavit of Tayfun Tuzun, 2/27/04;**
6. **Doc. No. 302 Motion to Quash Subpoena Served on Tayfun Tuzun, 3/19/2004;**
7. **Doc. No. 305 Motion to Strike Errata Sheet Submitted By Norbert Brinker, 3/24/2004;**
8. **Docs. No. 328 and 329 Motions to Stay Consideration of Summary Judgment Motions by KMK and Dinsmore, filed 5/13/04 and 5/14/04;**
9. **PwC Report**—KMK is considering turning it over to plaintiffs. KMK has cited and relied on this in pleadings and in depositions;

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**GENERAL**

10. Role of E&Y and KMK in the case now that they have been dismissed. Additionally, KMK, through counsel, has simply refused to meaningfully cooperate in discovery, as their response to the subpoena indicates;
11. Date for Expert Reports to be Produced—Not Clear from Current Scheduling Order, Doc. No. 221;

**DEPOSITIONS**

12. **Objections**--KMK has repeatedly made speaking objections that suggest an answer, or suggest that the witness not answer the question, i.e. Objection, calls for speculation—and then the witness says I am not going to speculate on that;
13. **Length of Depositions**—the presumptive 7 hour rule should not apply to this case. The very fact that this is complex litigation suggests that normal rules should not apply. The complexity of the issues and the voluminous nature of the documents suggests that, where needed, plaintiffs should be given additional time. Second, KMK witnesses have done everything in their power to attempt to run out the clock. How would the Court like to proceed on this issue?
14. **Instructions Not to Answer Questions**—KMK has repeatedly instructed witnesses not to answer questions. We spoke with Judge Beckwith once on this issue, and she indicated that generally speaking, such instructions were not proper, *See*, Pedoto Deposition at pages 216-230, Specific Instruction by the Court at page 228;

Kindly advise on how you wish to proceed, keeping in mind that this issue needs to be resolved by Monday. Thank you for your cooperation.

Sincerely,



Michael G. Brautigam  
Counsel By Fax



**LAW OFFICES OF GENE MESH AND ASSOCIATES**

25 June 2004

By Fax 721 2139

Thomas W. Breidenstein, Esq.  
BARRETT & WEBER  
500 Fourth & Walnut Centre  
105 East Fourth Street  
Cincinnati, OH 45202-4015

**Re: OHSL**

Dear Mr. Breidenstein:

I am writing to withdraw my request for any insurance policies relating to KMK at this time in the subpoena that I recently served. I also wish to limit my request for documents provided to the Lindner family to documents related to Provident's 2003 Restatements.

Finally, point 9 in your objections to the subpoena indicates that KMK has already provided relevant non-privileged document and a privilege. While I am researching this issue, it is my recollection that KMK provided a single piece of paper in response to the previous subpoena.

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Is there any point in discussing narrowing the documents requested as I have tried to do above, or will KMK simply blindly resist all attempts at obtaining discovery from them?

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Thank you for your cooperation.

Sincerely,



Michael G. Brautigam

cc: All Counsel by Fax

